

3
4 A RESOLUTION authorizing the City of Fort
5 Wayne to continue financing on an interim
6 basis the purchase of Puritan Utilities,
Inc., Diversified Utilities, Inc. and
Maplewood Park Utilities, Inc. (Inbalco).

7 WHEREAS, an Agreement for the Purchase of Assets (Purchase)
8 has been executed between the City of Fort Wayne and Puritan
9 Utilities, Inc., Diversified Utilities, Inc. and Maplewood Park
10 Utilities, Inc. (more commonly known as Inbalco) on the 29th day
11 of April, 1981; and

12 WHEREAS, the City of Fort Wayne proposes to sell 1982
13 Revenue Bonds (Utility Project) for capital expenditures for
14 water and sewer improvements for the permanent financing of
15 the Purchase when bond market conditions improve and statutory
16 procedures are completed; and

17 WHEREAS, the City of Fort Wayne did borrow the sum of
18 Three Million Seven Hundred Thousand Dollars (\$3,700,000.00) on
19 July 27, 1981 from the Lincoln National Bank and Trust Company
20 of Fort Wayne pursuant to a promissory note and security
21 agreement of said date for interim financing of the Purchase; and

22 WHEREAS, said note was paid on December 29, 1981 to the
23 Lincoln National Bank and Trust Company of Fort Wayne; and

24 WHEREAS, present bond market conditions have inhibited
25 the reasonably prompt sale of the proposed City of Fort Wayne
26 Revenue Bonds (Utility Project) above described in 1981 and
27 said bonds are proposed to be issued and sold in 1982; and

28 WHEREAS, the City of Fort Wayne needs to borrow the sum
29 of Three Million Seven Hundred Thousand Dollars (\$3,700,000.00)
30 for a period of ninety (90) days and the Lincoln National Bank
31 and Trust Company of Fort Wayne is willing to loan to the City
32 of Fort Wayne Three Million Seven Hundred Thousand Dollars

1 (\$3,700,000.00) at a rate of interest of sixty percent (60%) of
2 the prime commercial lending rate of said bank as such rate
3 changes from date to date for a period of ninety (90) days,
4 said loan to be evidenced by a promissory note and security
5 agreement, substantially final forms of which are attached hereto;

6 NOW THEREFORE BE IT RESOLVED by the Common Council of the
7 City of Fort Wayne, Indiana:

8 SECTION 1. The City of Fort Wayne is authorized to borrow
9 the sum of Three Million Seven Hundred Thousand Dollars
10 (\$3,700,000.00) from the Lincoln National Bank and Trust Company
11 of Fort Wayne for a period of ninety (90) days at a rate of
12 interest of sixty percent (60%) of the prime commercial lending
13 rate of said bank pursuant to the substantially final forms of
14 promissory note and security agreement attached hereto, with
15 such changes, not altering the form or substance, as may be
16 determined by the Mayor, and said note, security agreement, and
17 other documents deemed necessary to conclude the transaction are
18 hereby authorized to be executed by the Mayor of the City of
19 Fort Wayne and the Clerk of the City of Fort Wayne.

20
21 
22 COUNCILMAN

23 APPROVED AS TO FORM AND LEGALITY
24 THIS 5th DAY OF Jan., 1982.

25 
26 _____
27 BRUCE O. BOXBERGER, CITY ATTORNEY
28
29
30
31
32

Read the first time in full and on motion by _____, seconded by _____, and duly adopted, read the second time by title and referred to the Committee _____ (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Chambers, City-County Building, Fort Wayne, Indiana, on _____, 19____, the _____ day of _____, at _____ o'clock _____ M., E.S.T.

DATE: _____

CHARLES W. WESTERMAN
CITY CLERK

Read the third time in full and on motion by Stier, seconded by Stier, and duly adopted, placed on its passage. PASSED (~~lost~~) by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT	TO-WIT:
<u>TOTAL VOTES</u>	<u>8</u>	_____	_____	_____	_____
<u>BURNS</u>	<u>X</u>	_____	_____	_____	_____
<u>EISBART</u>	<u>X</u>	_____	_____	_____	_____
<u>GiaQUINTA</u>	<u>X</u>	_____	_____	_____	_____
<u>NUCKOLS</u>	<u>X</u>	_____	_____	_____	_____
<u>SCHMIDT, D.</u>	<u>X</u>	_____	_____	_____	_____
SCHMIDT, D.	_____	_____	_____	_____	_____
<u>SCHOMBURG</u>	<u>X</u>	_____	_____	_____	_____
<u>STIER</u>	<u>X</u>	_____	_____	_____	_____
<u>TALARICO</u>	<u>X</u>	_____	_____	_____	_____

DATE: 1-5-82

Charles W. Westerman
CHARLES W. WESTERMAN - CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (ZONING MAP) (GENERAL) (ANNEXATION) (SPECIAL) (APPROPRIATION) ORDINANCE- (RESOLUTION) No. R-01-82 on the 5th day of January, 19 82.

ATTEST:

(SEAL)

Charles W. Westerman
CHARLES W. WESTERMAN - CITY CLERK

Samuel J. Talarico
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 6th day of January, 19 82, at the hour of 9:00 o'clock A. M., E.S.T.

Charles W. Westerman
CHARLES W. WESTERMAN - CITY CLERK

Approved and signed by me this 6th day of January 19 82, at the hour of 9:30 o'clock A. M., E.S.T.

Winfield C. Moses, Jr.
WINFIELD C. MOSES, JR.
MAYOR

SECURITY AGREEMENT

The undersigned, Lincoln National Bank and Trust Company of Fort Wayne, Indiana, (herein called "Secured Party") and City of Fort Wayne, Indiana, a municipal corporation, (herein called "Debtor"), agree as follows:

I. Creation of Security Interest. Debtor hereby grants to Secured Party a security interest in and a lien upon the Collateral described in Section III to secure the payment of the Note, as hereinafter defined, and the performance of this agreement by Debtor. Debtor further hereby assigns (a) its right, title, and interest in the Bond Proceeds, as hereinafter defined, and (b) its rights under the Escrow Agreement as hereinafter defined, to Secured Party.

II. Definitions.

1. "Collateral" means all of the property described in Section III below, and each part thereof, including proceeds.

2. "Net Revenues" means all amounts referred to as "Net Revenues" as such term is used in that certain Municipal Utility Review of the City of Fort Wayne dated December 31, 1980, and prepared by Municipal Consultants, Inc., for Moody's Investors Service, Inc.

3. "Bond Proceeds" means all amounts received or to be received by Debtor from the sale of the City of Fort Wayne 1982 Revenue Bonds (Utility Project) to be sold by Debtor within 1982.

4. "Note" means that certain Promissory Note of even date herewith of Debtor to Secured Party in the principal amount of \$3,700,000.00.

5. "Permitted Encumbrance" means any existing security interest granted by Secured Party prior to July 27, 1981, in Net Revenues.

6. "Escrow Agreement" means that certain Escrow Agreement executed on July 27, 1981, by and between Puritan Utilities, Inc., Diversified Utilities, Inc. and Maplewood Park Utilities, Inc. ("Sellers"), the City of Fort Wayne ("Buyer"), and Indiana National Bank of Indianapolis ("Escrow Agent").

III. Collateral. Collateral is (a) existing and after-acquired Net Revenues of Debtor arising out of Debtor's Water Pollution Control Utility and Water Utility (b) Bond Proceeds, and (c) the City's rights, title, and interest under the Escrow Agreement, and (d) all proceeds of Collateral.

IV. Debtor's Obligations and Warranties.

A. Obligation to Pay. Debtor shall pay to Secured Party at the time and in the manner provided all indebtedness evidenced by the Note and any and all renewals or extensions thereof or of any part thereof.

All such obligations shall be paid together with interest at the rate provided in the Note, costs of collection, and attorneys' fees, and without relief from valuation and appraisal laws.

B. Warranties. Debtor makes the following warranties which are continuing until termination of this Agreement:

1. All financial and credit statements and other financial data furnished Secured Party accurately reflect the financial condition of Debtor on the date or dates thereof and the results of its operations for the period or periods for which such information is furnished; and there has been no material adverse change, financial or otherwise, in Debtor's condition and no litigation or proceedings pending or threatened, to Debtor's knowledge, which could materially adversely affect Debtor's business, operations, or properties.

2. The Net Revenues represent bona fide, undisputed indebtedness owing to Debtor, and are valid and enforceable.

3. Debtor will obtain the Bond Proceeds on or before April 6, 1982.

4. Debtor has, or will have on or before April 6, 1982, full and clear title to the Collateral, except for Permitted Encumbrances.

C. Additional Obligations. Debtor agrees

1. To authorize Secured Party, if permitted by law, to prepare and file financing statements signed only by Secured Party covering Collateral.

2. To provide Secured Party with all documentation requested by Secured Party to keep Secured Party adequately informed regarding the continuing validity and satisfactory value of the Collateral.

3. To furnish any document or writing, and take any action, requested by Secured Party to perfect or protect the security interest against the rights or claims of third persons or to enable Secured Party to exercise its remedies.

4. To keep accurate and complete books and records pertaining to Collateral and the operation of its business, and at all reasonable times to permit Secured Party to inspect and abstract them, and to verify Collateral.

5. Debtor will not, without Secured Party's prior written consent, sell, transfer, surrender, pledge, grant any security interest in or lien upon, or otherwise encumber or subject Collateral to any unpaid charge or to any interest or claim of any kind of a third person created or suffered by Debtor voluntarily or involuntarily, or permit any financing statement, notice or recording (except any solely for the benefit of Secured Party) to be on file or of record with respect to Collateral, except for Permitted Encumbrances.

6. It will not amend the Escrow Agreement without the written permission of Secured Party.

V. Events of Default. The following shall be events of default:

A. Nonpayment, nonperformance or breach of, or misrepresentation or misstatement in connection with, any promise, obligation or warranty contained in this agreement or in any writing evidencing any obligation secured hereby.

B. The institution of bankruptcy or insolvency proceedings by or against Debtor, or the initiation of an arrangement or reorganization proceeding for Debtor.

VI. Secured Party's Benefits, Rights, and Remedies. After default Secured Party and all assignees of Secured Party shall have all benefits, rights and remedies which are provided or permitted under this agreement or under applicable law, including (without limiting the foregoing) the following:

1. The right to incur reasonable attorneys' fees and legal expenses in pursuing Secured Party's rights and remedies with respect to this Agreement, which Debtor shall pay if permitted by applicable state law.

2. The right to subrogate to all of Debtor's interests, rights and remedies in respect to the Net Revenue, and to take whatever action is deemed necessary by Secured Party to collect the Net Revenues, and Debtor agrees to cooperate fully with Secured Party in such collection.

3. The right to file suit for any obligation secured hereby either on this agreement or upon any separate writing or other evidence thereof.

4. The right to give any required notice or notification by mailing it, postage prepaid, to Debtor's address or by delivering it to a responsible person or to a conspicuous place at such address, the same to be deemed reasonable if so mailed or delivered at least ten (10) days before the event for which notice is required unless another period of time is specified by law.

5. Debtor hereby (a) waives all demands and notices (other than those specifically provided in this agreement), including without limitation notice of acceptance and of action taken by Secured Party, presentment, notice of dishonor, and notice of default, (b) consents to any substitution, exchange, addition or release of Collateral or other security as Debtor.

6. Secured Party shall not be deemed to have waived any default unless such waiver be in writing signed by Secured Party, and no waiver by Secured Party of any default shall operate as a waiver of any other default or of the same default on another occasion.

7. All remedies, to the full extent permitted by law, shall be cumulative and may be exercised singly or concurrently. Pursuit by Secured Party of its judicial or other remedies with respect to Debtor's obligations shall not abate or bar its judicial and other remedies with respect to Debtor's obligations or other portions of Collateral.

VII. Benefits, Rights and Remedies of Debtor. Debtor shall have all of the benefits, rights and remedies before or after default provided in Article 9 of the Uniform Commercial Code as in force at the date hereof in Indiana.

VIII. Miscellaneous Provisions.

A. This agreement shall be binding upon Debtor's successors and assigns, but Debtor may not assign this agreement without Secured Party's prior written consent.

B. Titles of the sections and subsections are for convenience only and shall not limit or alter the meaning thereof.

C. The validity and construction of this agreement shall be determined in accordance with the laws of Indiana.

D. Whenever possible, each provision of this agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition

without invalidating the remainder of such provision or the remaining provisions.

Signed by Debtor and Secured Party this 6th day of January, 1982.

CITY OF FORT WAYNE, INDIANA (Debtor)

By _____
Win Moses, Jr., its Mayor

By _____
Charles W. Westerman, its Clerk

LINCOLN NATIONAL BANK AND TRUST
COMPANY OF FORT WAYNE (Secured Party)

By _____
Its _____

PROMISSORY NOTE

\$3,700,000.00

Fort Wayne, Indiana
January 6, 1982

The Maker, City of Fort Wayne, Indiana, a municipal corporation, promises to pay to the order of Lincoln National Bank and Trust Company, payee, at its main office in Fort Wayne, Indiana, the sum of Three Million Seven Hundred Thousand Dollars (\$3,700,000.00), together with interest thereon from date until maturity at the rate per annum which is equal to sixty (60) percent of the payee's prime rate with costs of collection and attorney's fees, and without relief from valuation or appraisal laws, on or before _____, 1982. The rate of interest shall change from time to time effective on the same day with a change in said prime rate.

"Prime Rate" means the Bank's published interest rate the Bank charges for 90-day unsecured commercial loans at Fort Wayne, Indiana, to large corporate customers of the highest credit standing.

Notwithstanding anything herein to the contrary, this Note is payable solely from (a) revenues from City of Fort Wayne Water Pollution Control Utility and Water Utility, (b) proceeds (Bond Proceeds) received by the Maker from the sale of City of Fort Wayne 1982 Revenue Bonds (Utility Project) to be sold by the City within 1982, and (c) in the event the escrow account (as defined in that certain Escrow Agreement executed on or about July 27, 1981, between Inbalco and City of Fort Wayne) is not delivered to Inbalco, from such escrow account. This Note does not now or shall it ever constitute a charge against the general credit or taxing power of the City of Fort Wayne, Indiana.

This Note is secured by a Security Agreement of even date herewith.

Upon default under this Note, whether by lapse of time, acceleration or otherwise, the holder may exercise from time to time any and all rights and remedies available to it under the Uniform Commercial Code as in effect from time to time in Indiana. Proceeds of any disposition or realization of any security may be applied by the holder to the payment of such of the liabilities of the Maker to the holder, and in such order of application, as the holder may from time to time elect. No single or partial exercise by the holder of any right or remedy shall preclude any other or future exercise thereof or the exercise of any other right or remedy.

Maker hereby waives all presentment, demands, notices and protests and waives all defenses by reason of, and consents to, any one or more extensions of time for payment or other indulgences, renewals, or compositions granted or permitted by the holder. The holder shall have no duty as to the collection or protection of security or any income thereon or of any other rights pertaining to security beyond the safe custody of any thereof which may be in its possession. Maker assumes all obligation and risks of determining, protecting, exercising and enforcing all rights pertaining to any security. The waiver of any default, or the remedying of any default in a reasonable manner, shall not operate as a waiver of the default remedied on any subsequent occasion or of any other prior or subsequent default.

The loan evidenced hereby has been made and this Note has been delivered in Indiana and shall be governed by the laws of the State of Indiana.

IN WITNESS WHEREOF, the undersigned Maker has caused this Note to be duly executed by its duly authorized officers as of the date first above written.

CITY OF FORT WAYNE, INDIANA

Attest:

By Charles W. Westerman
Charles W. Westerman, its Clerk

By _____
Win Moses, Jr., its Mayor

DIGEST SHEETTITLE OF ORDINANCE ResolutionDEPARTMENT REQUESTING ORDINANCE Board of Works

SYNOPSIS OF ORDINANCE Resolution authorizes City to continue interim
financing of Inbalco purchase until bond market warrants bond sale
for permanent financing.

EFFECT OF PASSAGE Continuation of interim financing.

EFFECT OF NON-PASSAGE City will be unable to adequately enter into
permanent financing.

MONEY INVOLVED (DIRECT COSTS, EXPENDITURES, SAVINGS) Interest on note which
is payable from revenues of sewer and water customers.

ASSIGNED TO COMMITTEE (PRESIDENT) _____